



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष १०, अंक ८७]

सोमवार, डिसेंबर १६, २०२४/अग्रहायण २५, शके १९४६

[पृष्ठे ३, किंमत : रुपये ९.००

असाधारण क्रमांक १२४

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क), जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

In Re : Petition under Articles 191(1)(e) and 192(1) of the Constitution of India by Shri Ajit Vishnu Ranade regarding alleged disqualification of Shri Omprakash Bachchu Kadu, Member of the Maharashtra Legislative Assembly under article 191(1)(e) of the Constitution of India.

Order

This is a petition under Articles 191(1)(e) and 192(1) of the Constitution of India filed on 04.08.2023 by Shri Ajit Vishnu Ranade alleging that Shri Omprakash Bachchu Kadu, Member of the Maharashtra Legislative Assembly, has incurred disqualification under article 191(1)(e) of the Constitution of India, read with section 8(3) of the Representation of the People Act, 1951 (43 of 1951). In the petition, the petitioner has requested to disqualify Shri Omprakash Bachchu Kadu, Member of Maharashtra Legislative Assembly, on the ground of conviction order dated 08.03.2023 passed against him.

2. In this Petition, it has been stated that the Respondent has been convicted *vide* conviction order passed by the Hon'ble Special (MP & MLA) Court, Nashik on 08.03.2023 in Sessions Case No. 176/2021, for rigorous imprisonment of one year for an offence under section 353 of Indian Penal Code, 1860 (Assault or use of Criminal Force on a public servant) and rigorous imprisonment of one year for an offence under section 504 of India Penal Code, 1860 (Intentional Insult), totalling to two years of rigorous imprisonment. The conviction order of the Court specifically mentions that "both sentences shall run concurrently".

3. As required by the provisions of clause (2) of article 192 of the Constitution, the question of the alleged disqualification of Shri Omprakash Bachchu Kadu, Member of Maharashtra Legislative Assembly, was referred to the Election Commission of India for its opinion.

4. The Commission in its opinion dated 17.11.2023 referred the provisions of Article 191 of the Constitution and section 8(3) of the Representation of the People Act, 1951 (43 of 1951) as the petitioner has alleged the disqualification under the said Article and section.

Article 191(1)(e) of the Constitution provides that a person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State, if he is so disqualified by or under any law made by Parliament.

Section 8(3) of the Representation of the People Act, 1951 (43 of 1951) provides that a person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

5. The Commission has pointed out that the issue pertaining to the meaning to be assigned to the expression “a person convicted of any offence and sentenced to imprisonment for not less than two years” used in section 8(3) of the Representation of People Act, 1951 has been dealt by a five Judge bench of the Hon’ble Supreme Court in the case of K. Prabhakaran *vs.* P. Jayarajan, (2005) 1 SCC 754. The relevant extract of the judgment quoted in the Commission’s Opinion is as follows :

“54. [...] The expression “a person convicted of any offence’ has to be construed as” all offences of which a person has been charged and held guilty at one trial. The applicability of the expression’ sentenced to imprisonment for not less than 2 years’ would be decided by calculating the total term of imprisonment for which the person has been sentenced.”

“62. For the purpose of attracting applicability of disqualification within the meaning of “a person convicted of any offence and sentenced to imprisonment for not less than two years”,- the expression as occurring in section 8(3) of RPA, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. The word “any” qualifying the word “offence” should be understood as meaning the nature of offence and not the number of offence/offences.”

6. The Commission in its Order has reproduced the relevant extract of the order dated 08.03.2023 which is as follows :—

“1. Accused Omprakash aka Bacchu Babarao Kadu stands convicted under section 235(2) of the Code of Criminal Procedure, for an offence punishable under section 353 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of one year and to pay a fine of Rs. 5000, in default, to suffer rigorous imprisonment for three months.

2. He is further convicted under section 235(2) of the Code of Criminal Procedure, for an offence punishable under section 504 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of one year and to pay a fine of Rs. 5000, in default, to suffer rigorous imprisonment for three months.

3. Both sentences shall run concurrently.”

7. The Commission has stated that in view of the relevant provisions and the judgment cited above, the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial is the relevant time to be considered for attracting disqualification under section 8(3) of Representation of People Act, 1951. The Commission has opined that as per the conviction order dated 08.03.2023, the Respondent has to suffer two rigorous imprisonments of one year which have to run concurrently, thus the Respondent has to remain in prison for 1 year in total, therefore, section 8(3) of the Representation of People Act, 1951 is not attracted in present case.

8. In view of the above, the Election Commission of India has, under Article 192(2) of the Constitution of India, opined that the Respondent has not incurred disqualification under article 191 of the Constitution of India.

9. I, Ramesh Bais, Governor of Maharashtra, in exercise of the powers conferred upon me under article 192 of the Constitution of India, having considered the matter in the light of the opinion expressed by the Election Commission of India, pass the following order:

Order

The petition dated 04.08.2023 filed by Shri Ajit Vishnu Ranade, on the question of alleged disqualification of Shri Omprakash *alias* Bachchu Babarao Kadu, Member of Maharashtra Legislative Assembly is hereby, for the reasons stated above, dismissed.

RAMESH BAIS,

Governor of Maharashtra.

Dated 31st January 2024.

क्रमांक संकीर्ण-२०२४/प्र.क्र.१८५/२४/३३

सामान्य प्रशासन विभाग

मादाम कामा रोड, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई ४०० ०३२,
दिनांक १६ डिसेंबर, २०२४.

प्रत, माहिती व योग्य कार्यवाहीसाठी अग्रेषित :—

- (१) सचिव, विधानमंडळ सचिवालय, विधानभवन, मुंबई.
- (२) जिल्हाधिकारी तथा जिल्हा निवडणूक अधिकारी, अमरावती.
- (३) उप जिल्हाधिकारी तथा उप जिल्हा निवडणूक अधिकारी, अमरावती.

म. रा. पारकर,
उप सचिव व सह मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.